

# FBI Ordered To Keep Notes

By DAVID PIKE

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WASHINGTON — The Federal Bureau of Investigation has been told by the U.S. Court of Appeals for the District of Columbia that its agents here must keep the rough notes they take while interviewing witnesses to a crime.

In an opinion written by Judge J. Skelly Wright, a three-judge panel of the court ruled Monday that such information may later be found by the courts to be helpful to a defendant and therefore relevant to a case.

THE APPEALS court ruled that District of Columbia police have been pre-

serving such notes since an appellate court ruling in 1971, but that FBI agents, as a matter of practice, continue to throw away such notes after a report based on them has been prepared.

Wright's opinion said that such behavior by the FBI, in view of various earlier court rulings, was "negligence" but not "bad faith."

The ruling came in the case of three men convicted of the armed robbery of a Washington, D.C., savings and loan in March 1972.

THE APPEALS court upheld the convictions despite destruction of the FBI

notes because, it said, D.C. police had kept their interview notes and because "the evidence of guilt adduced at trial was overwhelming."

However, Wright's opinion said, "full sanctions will be invoked in future cases unless the FBI's practices are modified ..."

"The reports contain the agents' narrative account of the witness statement, prepared partly from the rough notes and partly from the agents' recollection of the interview," the court said.

"ALTHOUGH THE agents are trained to include all the pertinent information in the report, there is clearly room

for misunderstanding or outright error whenever there is a transfer of information in this manner."

Outlining the impact of the present practice, the court said:

"Whether or not the prosecution uses the witness at trial, the notes could contain substantive information or leads which would be of use to the defendants on the merits of the case. If the witness does testify, the notes might reveal a discrepancy between his testimony on the stand and his story at a time when the events were fresh in his mind. The discrepancy would obviously be impor-

tant for use in impeaching the witness' credibility.

THE GOVERNMENT argued that keeping rough notes would impose "an intolerable administrative burden on the bureau."

But the judges found the average report was two pages long, and the notes usually shorter. They concluded that preserving notes would not create "superable space problems."

The opinion suggests such methods for preserving the agents' notes as reducing documents to microfilm simply stapling the notes to the report.